

**ASSEMBLY BILL**

**No. 1261**

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**Introduced by Assembly Member Leno**

February 22, 2005

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An act to amend Sections 48853, 48853.5, 48859, and 49069.5 of the Education Code, and to amend Section 319 of the Welfare and Institutions Code, relating to foster children.

LEGISLATIVE COUNSEL'S DIGEST

AB 1261, as introduced, Leno. Foster children: education.

Existing law requires a pupil placed in a licensed children's institution or foster family home to attend programs operated by the local educational agency, unless one of certain circumstances applies.

This bill would revise the applicable circumstances.

The bill would also define "local educational agency" for these purposes.

Existing law provides that, if a school placement dispute arises, a foster child has the right to remain in his or her school of origin pending resolution of the dispute.

This bill would provide that the dispute shall be resolved in accordance with the existing dispute resolution process available to any pupil served by the local educational agency.

Existing law provides that "school of origin" means the school that the foster child attended when permanently housed or the school in which the foster child was last enrolled. Existing law requires the educational liaison for foster children to determine, as provided, the school that shall be deemed the school of origin for a foster child if, among other things, there is some other school that the foster child attended with which the foster child is connected.

This bill would additionally require that the foster child attended that connected school in the past 15 months.

Existing law provides that the proper and timely transfer between schools of pupils in foster care is the responsibility of both the local educational agency and the county placing agency and imposes various requirements relating to the transfer of those pupils between schools.

This bill would define “pupil in foster care” for these purposes.

Existing law sets forth the circumstances under which a minor may be adjudged a dependent child of the juvenile court, and establishes procedures to determine temporary placement of a dependent child.

This bill would authorize the court, at the initial hearing or anytime thereafter up until the time that the minor is adjudged a dependent child of the court or a finding is made dismissing the petition, to temporarily limit the right of the parent or guardian to make educational decisions for the child and temporarily appoint a responsible adult to make educational decisions for the child if all of specified conditions are found.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 48853 of the Education Code is  
2 amended to read:  
3 48853. (a) A pupil placed in a licensed children’s institution  
4 or foster family home shall attend programs operated by the local  
5 educational agency, unless one of the following applies:  
6 (1) *The pupil is entitled to remain in his or her school of*  
7 *origin pursuant to paragraph (1) of subdivision (d) of Section*  
8 *48853.5.*  
9 (2) The pupil has an individualized education program  
10 requiring placement in a nonpublic, nonsectarian school or  
11 agency, or in another local educational agency.  
12 ~~(2)–~~  
13 (3) The parent or guardian, or other person holding the right to  
14 make educational decisions for the pupil pursuant to Section 361  
15 or 727 of the Welfare and Institutions Code or Section 56055,  
16 determines that it is in the best interest of the pupil to be placed  
17 in another educational program, ~~or that the pupil continue in his~~

1 ~~or her school of origin pursuant to paragraph (1) of subdivision~~  
2 ~~(d) of Section 48853.5.~~

3 (b) Before any decision is made to place a pupil in a juvenile  
4 court school as defined by Section 48645.1, the parent or  
5 guardian, or person holding the right to make educational  
6 decisions for the pupil pursuant to Section 361 or 726 of the  
7 Welfare and Institutions Code or Section 56055, shall first  
8 consider placement in the regular public school.

9 (c) If any dispute arises as to the school placement of a pupil  
10 subject to this section, the pupil has the right to remain in his or  
11 her school of origin, as defined in subdivision (e) of Section  
12 48853.5, pending resolution of the dispute. *The dispute shall be*  
13 *resolved in accordance with the existing dispute resolution*  
14 *process available to any pupil served by the local educational*  
15 *agency.*

16 (d) This section does not supersede other laws that govern  
17 pupil expulsion.

18 (e) This section does not supersede any other law governing  
19 the educational placement in a juvenile court school, as defined  
20 by Section 48645.1, of a pupil detained in a county juvenile hall,  
21 or committed to a county juvenile ranch, camp, forestry camp, or  
22 regional facility.

23 (f) Foster children living in emergency shelters, as referenced  
24 in McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec.  
25 11431 et seq.), may receive educational services at the  
26 emergency shelter as necessary for short periods of time for  
27 either of the following reasons:

28 (1) For health and safety emergencies.

29 (2) To provide temporary, special, and supplementary services  
30 to meet the child's unique needs if a decision regarding whether  
31 it is in the child's best interest to attend the school of origin  
32 cannot be made promptly, it is not practical to transport the child  
33 to the school of origin, and the child would otherwise not receive  
34 educational services.

35 The educational services may be provided at the shelter  
36 pending a determination by the person holding the right  
37 regarding the educational placement of the child.

38 (g) All educational and school placement decisions shall be  
39 made to ensure that the child is placed in the least restrictive  
40 educational programs and has access to academic resources,

1 services, and extracurricular and enrichment activities that are  
2 available to all pupils. In all instances, educational and school  
3 placement decisions shall be based on the best interests of the  
4 child.

5 SEC. 2. Section 48853.5 of the Education Code is amended to  
6 read:

7 48853.5. (a) This section applies to any foster child who has  
8 been removed from his or her home pursuant to Section 309 of  
9 the Welfare and Institutions Code, is the subject of a petition  
10 filed under Section 300 or 602 of the Welfare and Institutions  
11 Code, or has been removed from his or her home and is the  
12 subject of a petition filed under Section 300 or 602 of the  
13 Welfare and Institutions Code.

14 (b) Each local educational agency shall designate a staff  
15 person as the educational liaison for foster children. In a school  
16 district that operates a foster children services program pursuant  
17 to Chapter 11.3 (commencing with Section 42920) of Part 24, the  
18 educational liaison shall be affiliated with the local foster  
19 children services program. The liaison shall do all of the  
20 following:

21 (1) Ensure and facilitate the proper educational placement,  
22 enrollment in school, and checkout from school of foster  
23 children.

24 (2) Assist foster children when transferring from one school to  
25 another or from one school district to another in ensuring proper  
26 transfer of credits, records, and grades.

27 (c) This section does not grant authority to the educational  
28 liaison that supersedes the authority granted under state and  
29 federal law to a parent or guardian retaining educational rights, a  
30 responsible adult appointed by the court to represent the child  
31 pursuant to Section 361 or 726 of the Welfare and Institutions  
32 Code, a surrogate parent, or a foster parent exercising the  
33 authority granted under Section 56055. The role of the  
34 educational liaison is advisory with respect to placement  
35 decisions and determination of school of origin.

36 (d) (1) At the initial detention or placement, or any  
37 subsequent change in placement of a foster child, the local  
38 educational agency serving the foster child shall allow the foster  
39 child to continue his or her education in the school of origin for  
40 the duration of the academic school year.

1 (2) The liaison, in consultation with and the agreement of the  
2 foster child and the person holding the right to make educational  
3 decisions for the foster child may, in accordance with the foster  
4 child's best interest, recommend that the foster child's right to  
5 attend the school of origin be waived and the foster child be  
6 enrolled in any public school that pupils living in the attendance  
7 area in which the foster child resides are eligible to attend.

8 (3) Prior to making any recommendation to move a foster  
9 child from his or her school of origin, the liaison shall provide  
10 the foster child and the person holding the right to make  
11 educational decisions for the foster child with a written  
12 explanation stating the basis for the recommendation and how  
13 this recommendation serves the foster child's best interest.

14 (4) (A) If the liaison in consultation with the foster child and  
15 the person holding the right to make educational decisions for the  
16 foster child agree that the best interests of the foster child would  
17 be served by his or her transfer to a school other than the school  
18 of origin, the foster child shall immediately be enrolled in the  
19 new school.

20 (B) The new school shall immediately enroll the foster child  
21 even if the foster child is unable to produce records or clothing  
22 normally required for enrollment, such as previous academic  
23 records, medical records, proof of residency, other  
24 documentation, or school uniforms.

25 (C) The liaison for the new school shall, within two business  
26 days of the foster child's request for enrollment, contact the  
27 school last attended by the foster child to obtain all academic and  
28 other records. The school liaison for the school last attended shall  
29 provide all records to the new school within two business days of  
30 receiving the request.

31 (5) If any dispute arises regarding the request of a foster child  
32 to remain in the school of origin, the foster child has the right to  
33 remain in the school of origin pending resolution of the dispute.  
34 *The dispute shall be resolved in accordance with the existing*  
35 *dispute resolution process available to any pupil served by the*  
36 *local educational agency.*

37 (6) The local educational agency and the county placing  
38 agency are encouraged to collaborate to ensure maximum  
39 utilization of available federal moneys, explore public-private

1 partnerships, and access any other funding sources to promote  
2 the well-being of foster children through educational stability.

3 (e) For purposes of this section, “school of origin” means the  
4 school that the foster child attended when permanently housed or  
5 the school in which the foster child was last enrolled. If the  
6 school the foster child attended when permanently housed is  
7 different from the school in which the foster child was last  
8 enrolled, or if there is some other school that the foster child  
9 attended with which the foster child is connected *and which the*  
10 *foster child attended within the immediately preceding 15*  
11 *months*, the liaison, in consultation with and the agreement of the  
12 foster child and the person holding the right to make educational  
13 decisions for the foster child, shall determine in the best interest  
14 of the foster child, the school that shall be deemed the school of  
15 origin.

16 (f) This section does not supersede other law governing the  
17 educational placements in juvenile court schools, as defined by  
18 Section 48645.1, by the juvenile court under Section 602 of the  
19 Welfare and Institutions Code.

20 SEC. 3. Section 48859 of the Education Code is amended to  
21 read:

22 48859. For purposes of this chapter, the following terms have  
23 the following meanings:

24 (a) “County placing agency” means the county social service  
25 department or county probation department.

26 (b) “Educational authority” means an entity designated to  
27 represent the interests of a child for educational and related  
28 services.

29 (c) *“Local educational agency” means a public board of*  
30 *education or other public authority legally constituted within the*  
31 *state for either administrative control or direction of, or to*  
32 *perform a service function for, public elementary or secondary*  
33 *schools in a city, county, township, school district, or other*  
34 *political subdivision of this state, or for a combination of school*  
35 *districts or counties as are recognized in this state as an*  
36 *administrative agency for its public elementary or secondary*  
37 *schools.*

38 SEC. 4. Section 49069.5 of the Education Code is amended to  
39 read:

1 49069.5. (a) The Legislature finds and declares that the  
2 mobility of pupils in foster care often disrupts their educational  
3 experience. The Legislature also finds that efficient transfer  
4 procedures and transfer of pupil records is a critical factor in the  
5 swift placement of foster children in educational settings.

6 (b) The proper and timely transfer between schools of pupils  
7 in foster care is the responsibility of both the local educational  
8 agency and the county placing agency.

9 (c) As soon as the county placing agency becomes aware of  
10 the need to transfer a pupil in foster care out of his or her current  
11 school, the county placing agency shall contact the appropriate  
12 person at the local educational agency of the pupil. The county  
13 placing agency shall notify the local educational agency of the  
14 date that the pupil will be leaving the school and request that the  
15 pupil be transferred out.

16 (d) Upon receiving a transfer request from a county placing  
17 agency, the local educational agency shall, within two business  
18 days, transfer the pupil out of school and deliver the educational  
19 information and records of the pupil to the next educational  
20 placement.

21 (e) As part of the transfer process described under  
22 subdivisions (c) and (d), the local educational agency shall  
23 compile the complete educational record of the pupil including a  
24 determination of seat time, full or partial credits earned, current  
25 classes and grades, immunization and other records, and, if  
26 applicable, a copy of the pupil's plan adopted pursuant to Section  
27 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794  
28 et seq.) or individualized education program adopted pursuant to  
29 the federal Individuals with Disabilities Education Act (20  
30 U.S.C. Sec. 1400 et seq.).

31 (f) The local educational agency shall assign the duties listed  
32 in this section to a person competent to handle the transfer  
33 procedure and aware of the specific educational record keeping  
34 needs of homeless, foster, and other transient children who  
35 transfer between schools.

36 (g) The local educational agency shall ensure that if the pupil  
37 in foster care is absent from school due to a decision to change  
38 the placement of a pupil made by a court or placing agency, the  
39 grades and credits of the pupil will be calculated as of the date

1 the pupil left school, and no lowering of grades will occur as a  
2 result of the absence of the pupil under these circumstances.

3 (h) The local educational agency shall ensure that if the pupil  
4 in foster care is absent from school due to a verified court  
5 appearance or related court ordered activity, no lowering of his or  
6 her grades will occur as a result of the absence of the pupil under  
7 these circumstances.

8 (i) *For the purposes of this section, "pupil in foster care"*  
9 *means any child who has been removed from his or her home*  
10 *pursuant to Section 309 of the Welfare and Institutions Code, is*  
11 *the subject of a petition filed under Section 300 or 602 of the*  
12 *Welfare and Institutions Code, or has been removed from his or*  
13 *her home and is the subject of a petition filed under Section 300*  
14 *or 602 of the Welfare and Institutions Code.*

15 SEC. 5. Section 319 of the Welfare and Institutions Code is  
16 amended to read:

17 319. (a) At the initial petition hearing, the court shall  
18 examine the child's parents, guardians, or other persons having  
19 relevant knowledge and hear the relevant evidence as the child,  
20 the child's parents or guardians, the petitioner, or their counsel  
21 desires to present. The court may examine the child, as provided  
22 in Section 350.

23 (b) The social worker shall report to the court on the reasons  
24 why the child has been removed from the parent's custody; the  
25 need, if any, for continued detention; the available services and  
26 the referral methods to those services that could facilitate the  
27 return of the child to the custody of the child's parents or  
28 guardians; and whether there are any relatives who are able and  
29 willing to take temporary custody of the child. The court shall  
30 order the release of the child from custody unless a prima facie  
31 showing has been made that the child comes within Section 300,  
32 the court finds that continuance in the parent's or guardian's  
33 home is contrary to the child's welfare, and any of the following  
34 circumstances exist:

35 (1) There is a substantial danger to the physical health of the  
36 child or the child is suffering severe emotional damage, and there  
37 are no reasonable means by which the child's physical or  
38 emotional health may be protected without removing the child  
39 from the parents' or guardians' physical custody.



1 (2) There is substantial evidence that a parent, guardian, or  
2 custodian of the child is likely to flee the jurisdiction of the court.

3 (3) The child has left a placement in which he or she was  
4 placed by the juvenile court.

5 (4) The child indicates an unwillingness to return home, if the  
6 child has been physically or sexually abused by a person residing  
7 in the home.

8 (c) If the matter is continued pursuant to Section 322 or for  
9 any other reason, the court shall find that the continuance of the  
10 child in the parent's or guardian's home is contrary to the child's  
11 welfare at the initial petition hearing or order the release of the  
12 child from custody.

13 (d) (1) The court shall also make a determination on the  
14 record, referencing the social worker's report or other evidence  
15 relied upon, as to whether reasonable efforts were made to  
16 prevent or eliminate the need for removal of the child from his or  
17 her home, pursuant to subdivision (b) of Section 306, and  
18 whether there are available services that would prevent the need  
19 for further detention. Services to be considered for purposes of  
20 making this determination are case management, counseling,  
21 emergency shelter care, emergency in-home caretakers,  
22 out-of-home respite care, teaching and demonstrating  
23 homemakers, parenting training, transportation, and any other  
24 child welfare services authorized by the State Department of  
25 Social Services pursuant to Chapter 5 (commencing with Section  
26 16500) of Part 4 of Division 9. The court shall also review  
27 whether the social worker has considered whether a referral to  
28 public assistance services pursuant to Chapter 2 (commencing  
29 with Section 11200) and Chapter 7 (commencing with Section  
30 14000) of Part 3, Chapter 1 (commencing with Section 17000) of  
31 Part 5, and Chapter 10 (commencing with Section 18900) of Part  
32 6 of Division 9 would have eliminated the need to take temporary  
33 custody of the child or would prevent the need for further  
34 detention.

35 (2) If the child can be returned to the custody of his or her  
36 parent or guardian through the provision of those services, the  
37 court shall place the child with his or her parent or guardian and  
38 order that the services shall be provided. If the child cannot be  
39 returned to the custody of his or her parent or guardian, the court  
40 shall determine if there is a relative who is able and willing to

1 care for the child, and has been assessed pursuant to paragraph  
2 (1) of subdivision (d) of Section 309.

3 (e) Whenever a court orders a child detained, the court shall  
4 state the facts on which the decision is based, shall specify why  
5 the initial removal was necessary, shall reference the social  
6 worker's report or other evidence relied upon to make its  
7 determination whether continuance in the home of the parent or  
8 legal guardian in contrary to the child's welfare, shall order  
9 temporary placement and care of the child to be vested with the  
10 county child welfare department pending the hearing held  
11 pursuant to Section 355 or further order of the court, and shall  
12 order services to be provided as soon as possible to reunify the  
13 child and his or her family if appropriate.

14 (f) When the child is not released from custody, the court may  
15 order that the child shall be placed in the assessed home of a  
16 relative, in an emergency shelter or other suitable licensed place,  
17 in a place exempt from licensure designated by the juvenile  
18 court, or in the assessed home of a nonrelative extended family  
19 member as defined in Section 362.7 for a period not to exceed 15  
20 judicial days.

21 As used in this section, "relative" means an adult who is  
22 related to the child by blood, adoption, or affinity within the fifth  
23 degree of kinship, including stepparents, stepsiblings, and all  
24 relatives whose status is preceded by the words "great,"  
25 "great-great," or "grand," or the spouse of any of these persons,  
26 even if the marriage was terminated by death or dissolution.  
27 However, only the following relatives shall be given preferential  
28 consideration for placement of the child: an adult who is a  
29 grandparent, aunt, uncle, or sibling of the child.

30 The court shall consider the recommendations of the social  
31 worker based on the assessment pursuant to paragraph (1) of  
32 subdivision (d) of Section 309 of the relative's home, including  
33 the results of a criminal records check and prior child abuse  
34 allegations, if any, prior to ordering that the child be placed with  
35 a relative. The court shall order the parent to disclose to the  
36 social worker the names, residences, and any known identifying  
37 information of any maternal or paternal relatives of the child. The  
38 social worker shall initiate the assessment pursuant to Section  
39 361.3 of any relative to be considered for continuing placement.

1     (g) (1) *At the initial hearing upon the petition filed in*  
2 *accordance with subdivision (c) of Rule 1406 of the California*  
3 *Rules of Court or anytime thereafter up until the time that the*  
4 *minor is adjudged a dependent child of the court or a finding is*  
5 *made dismissing the petition, the court may temporarily limit the*  
6 *right of the parent or guardian to make educational decisions for*  
7 *the child and temporarily appoint a responsible adult to make*  
8 *educational decisions for the child if all of the following*  
9 *conditions are found:*

10     (A) *The parent or guardian is unavailable, unable, or*  
11 *unwilling to exercise educational rights for the child.*

12     (B) *The county placing agency has made diligent efforts to*  
13 *locate and secure the participation of the parent or guardian in*  
14 *educational decisionmaking.*

15     (C) *The child's educational needs cannot be met without the*  
16 *temporary appointment of a responsible adult.*

17     (2) *Any temporary appointment of a responsible adult and*  
18 *temporary limitation on the right of the parent or guardian to*  
19 *make educational decisions for the child shall be specifically*  
20 *addressed in the court order. Any order made under this section*  
21 *shall expire at the conclusion of the hearing held pursuant to*  
22 *Section 361 or upon dismissal of the petition. Upon the entering*  
23 *of disposition orders any additional needed limitation on the*  
24 *parent's educational rights shall be addressed pursuant to*  
25 *Section 361.*